

ANNE MCELROY,

Plaintiff

v.

ZWICKER & ASSOCIATES, P.C.,

Defendant

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)
)
) **Case No.:**
)
) **COMPLAINT AND DEMAND FOR JURY**
) **TRIAL**
)
) **(Unlawful Debt Collection Practices)**

ANNE MCELROY (“Plaintiff”), by and through her attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against ZWICKER & ASSOCIATES, P.C. (“Defendant”):

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. §1692 *et seq.* ("FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive and unfair practices.

2. Jurisdiction of this court arises pursuant to 15 U.S.C. §1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and 28 U.S.C. §1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant conducts business in the Commonwealth of Massachusetts, and therefore, personal jurisdiction is established.

1 repeatedly and continuously contacted Plaintiff on her home and cellular telephones in its
2 attempts to collect an alleged debt.

3 15. Defendant contacted Plaintiff, on average, one (1) to three (3) times a day.

4 16. Upon information and belief, Defendant contacted Plaintiff with such frequency
5 for the sole purpose of annoying, abusing, and harassing her, believing that to do so would cause
6 Plaintiff to make payment on the alleged debt.

7 17. Further, in its attempts to collect the alleged debt, Defendant called Plaintiff's
8 mother.

9 18. Plaintiff never gave Defendant permission to communicate with any third party,
10 including her mother, regarding the alleged debt.

11 19. During its conversation with Plaintiff's mother, Defendant told her that it was
12 looking for Plaintiff and proceeded to inquire into personal details about Plaintiff.

13 20. For example, Defendant asked Plaintiff's mother whether Plaintiff had children
14 and wanted to know details about the relationship that Plaintiff had with her mother.

15 21. Upon information and belief, Defendant asked Plaintiff's mother personal
16 questions about Plaintiff in order to embarrass, scare, and harass Plaintiff, hoping that to do so
17 would cause Plaintiff to make payment on the alleged debt.

18 22. Plaintiff was extremely embarrassed as a result of Defendant's conversation with
19 her mother.

20 23. Further, at the time Defendant contacted Plaintiff's mother, it possessed valid
21 contact information for Plaintiff; therefore, its statements were deceptive.
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**DEFENDANT VIOLATED THE
FAIR DEBT COLLECTION PRACTICES ACT**

COUNT I

24. Defendant's conduct, detailed in the preceding paragraphs, violated 15 U.S.C. §1692b(1).

- a. Section 1692b(1) of the FDCPA states that when communicating with a third-party regarding a consumer's location information, the debt collector is to identify himself, state that he is confirming or correcting location information concerning the consumer, and only if expressly requested, identify his employer.
- b. Here, Defendant violated §1692b(1) of the FDCPA by asking Plaintiff's mother whether Plaintiff had children, and inquiring into the relationship that Plaintiff had with her mother.

COUNT II

25. Defendant's conduct, detailed in the preceding paragraphs, violated 15 U.S.C. §§1692d and 1692d(5).

- a. Section 1692d of the FDCPA prohibits a debt collector from engaging in conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.
- b. A debt collector violates §1692d(5) of the FDCPA by causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.
- c. Here, Defendant violated §1692d of the FDCPA when it called Plaintiff's

1 mother and requested impermissible personal information about Plaintiff.

- 2 d. Further, Here, Defendant violated §§1692d and 1692d(5) of the FDCPA
3 when it called Plaintiff multiple times a day, numerous days a week.
4

5 WHEREFORE, Plaintiff, ANNE MCELROY, respectfully prays for a judgment as
6 follows:

- 7 a. All actual damages suffered pursuant to 15 U.S.C. §1692k(a)(1);
8 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant
9 to 15 U.S.C. §1692k(a)(2)(A);
10 c. All reasonable attorneys' fees, witness fees, court costs and other
11 litigation costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3);
12 and
13 d. Any other relief deemed appropriate by this Honorable Court.
14

15 **DEMAND FOR JURY TRIAL**

16 PLEASE TAKE NOTICE that Plaintiff, ANNE MCELROY, demand a jury trial in this
17 case.

18 RESPECTFULLY SUBMITTED,

19 DATED: 06/14/2013

KIMMEL & SILVERMAN, P.C.

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